THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8842 OF 1995

DATE: 7-7-2006

Between:

Mekala Sambasiva Rao … Petitioner

And

1. The Deputy Commissioner of Endowments,
Govt. of A.P. Kakinada and another…. Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8842 OF 1995

ORDER:

The petitioner, who belongs to backward Class, was engaged as an N.M.R in the Sri Venugopalaswamy Vari Temple at Thotalavolluru village. Consequent on the retirement of one Sri V.Bhima Rao, on attaining the age of superannuation on 31.10.1994, the Trust Board of the Devasthanam sought approval of the Deputy Commissioner of Endowments to fill up the vacancy. According to the petitioner, the Deputy Commissioner of Endowments, Kakinada, the competent authority, in his proceedings dated 6.1.1995 accorded permission to the Executive Officer to fill up the post of attender. The Trust Board of the Devasthanam met later on 10.2.1995 and passed resolution appointing the petitioner as an attender on a consolidated pay of Rs.750/- per month. Consequent on the resolution of the Trust Board dated 10.2.1995, the Executive officer issued orders on 12.2.1995 appointing the petitioner as an attender on temporary basis. The petitioner joined duty on 12.2.1995 and it his case that ever since then he has been functioning as such. The Executive Officer, vide letter dated 19.2.1995, while informing the Deputy Commissioner, Endowments of the resolution of the Trust Board dated 10.2.1995 appointing the petitioner as an attender, sought his ratification of such appointment. While the matter stood thus, the Deputy Commissioner, vide proceedings dated 4.4.1995, held that the Executive Officer had not reported about the petitioner's

appointment and directed him to terminate the services of the petitioner with immediate effect, since the Executive Officer had failed to obtain approval as per the resolution of the Trust Board dated 10.2.1995. As a result thereof, the Executive Officer issued consequential proceedings dated 22.4.1995 terminating the services of the petitioner with immediate effect. On being pointed out that the Trust Board resolution dated 10.2.1995 had already been forwarded to the Deputy Commissioner and that the very resolution of the Trust Board dated 10.2.1995 is pursuant to the orders passed by the Deputy Commissioner on 6.1.1995 and therefore termination of his services was illegal, the Executive Officer is said to have expressed his inability to take any action in view of the proceedings of the Deputy Commissioner. The petitioner would submit that the order of the Deputy Commissioner, dated 4.4.1995, calling upon the Executive Officer to terminate the services of the petitioner is arbitrary and illegal. Petitioner would contend that all that is required under the Rules is to obtain prior permission from the Deputy Commissioner and since such permission was granted on 6.1.1995 to fill up the vacancy, no further approval was required thereafter. Petitioner would submit that termination of his services, without putting him on prior notice, was arbitrary and illegal.

The Executive Officer in his counter affidavit, would admit the fact that the Trust Board, in its resolution, had resolved to fill up the post of attender and that the petitioner was appointed as an attender purely on temporary basis on consolidated basis of Rs.750/- per month on 12.12.1992. According to the Executive Officer, the petitioner was irregular in his duties and was warned several times. It is also stated that devotees of the temple made

several complaints against the petitioner for his rude behaviour, that other employees of the temple had also complained against the behaviour of the petitioner and that despite repeated advices/warnings to mend his behaviour, the petitioner had failed to do so. According to the Executive Officer, the petitioner's case was examined and it was found that that his appointment on 19.2.1995 was without approval of the competent authority and as such his continuance was irregular and *ab initio* void.

As noted earlier, the 1st respondent, vide proceedings in Rc.No.D2/26402/94 dated 6.1.1995, in reply to the letter of the Executive Officer dated 2.12.1994, and taking into account the resolution of the Trust Board dated 22.10.1994 accorded permission to the Executive Officer to fill up the post of attender in the vacancy which arose due to retirement of the previous incumbent. Consequent thereupon, the then Executive Officer by order dated 12.2.1995, pursuant to the resolution of the Trust Board dated 10.2.1995, decided to fill up the post of attender and appointed the petitioner herein as an attender on temporary basis. Curiously, the 1st respondent, vide proceedings dated 4.4.1995 directed the Executive Officer to terminate the services of the petitioner with immediate effect on the ground that his approval for appointment of the petitioner as attender had not been obtained.

While the contention of Sri Nooty Rama Mohana Rao, learned counsel for the petitioner, that the allegations in the counter affidavit filed by the Executive Officer with regards the misbheaviour of the petitioner is neither reflected in the order of the Deputy Commissioner dated 4.4.1995 nor in the proceedings of the Executive Officer dated 22.4.1995 and that these were not the

reasons for terminating the services of the petitioner, is well founded, the learned Government Pleader for Endowments would contend that while the Deputy Commissioner had accorded approval for filling up the vacancy caused upon the retirement of the attender, prior approval of the Deputy Commissioner had nonetheless to be obtained for appointing the petitioner in the said post. Learned Government Pleader would submit that the Trust Board was also aware of this requirement, since in its resolution dated 10.2.1995, the Board had, in fact, resolved to seek approval of the Deputy Commissioner for having appointed the petitioner as an attender. Learned Government Pleader would submit that the Deputy Commissioner was justified in directing the Executive Officer to terminate the services of the petitioner since his approval for appointment of the petitioner as an attender had not been obtained. Learned Government Pleader would refer to the extant Rules in G.O.Ms.No.1476 dated 17.11.1986 in this regard.

Pursuant to the interim orders passed by this Court, in W.P.M.P.11053 of 1995 dated 28.4.1995, suspending the proceedings of the Deputy Commissioner dated 4.4.1995 and the order of the Executive Officer dated 22.4.1995, the petitioner continued to remain in service. While the Deputy Commissioner might have been justified in directing termination of the services of the petitioner on the ground that his approval had not been obtained, the fact remains that the petitioner cannot be faulted for the failure of the authorities in not seeking approval of the Deputy Commissioner with regards his appointment.

I, therefore, deem it appropriate to dispose of the writ petition directing the 2nd respondent to submit proposals seeking

approval of the 1st respondent for appointment of the petitioner as an attender in Sri Venugopala Swamy Vari Temple, Thotlavolluru village, Krishna District within one month from the date of receipt of a copy of this order. The 1st respondent, shall, within three months thereafter, consider the proposal submitted by the 2nd respondent and take action in accordance with law. Needless to state that the 1st respondent, while considering the proposals submitted by the 2nd respondent in this regard shall bear in mind the fact that the petitioner was appointed pursuant to the resolution of the Trust Board to fill up the existing vacancy and that he has been working in the said post for the past more than 12 years. Till a final decision is taken by the 1st respondent, the petitioner shall continue in service.

The writ petition is disposed of accordingly. However, in the circumstances, without costs.

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7-7-2006